

RESOLUTION NO. 2011-101

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING A MITIGATED NEGATIVE DECLARATION NO. MN2011-001, APPROVING TRANSFER OF DEVELOPMENT RIGHTS NO. TD2010-002; CONDITIONAL USE PERMIT NO. 2011-026, MODIFICATION PERMIT NO. 2011-014, AND WAIVER OF DEVELOPMENT AGREEMENT, AND FINDING TRAFFIC STUDY NO. TS2011-002 IN COMPLIANCE WITH THE TRAFFIC PHASING ORDINANCE, FOR A NEW COMMERCIAL DEVELOPMENT LOCATED AT 4221 DOLPHIN-STRIKER WAY (PA2010-135)

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ridgeway/Whitney, Partnership, with respect to property located at 4221 Dolphin-Striker Way, and legally described as Parcel 1 of Portion of Lot 4 of Tract No. 7770, requesting approval of an amendment to the Newport Place (PC-11) Planned Community Development Plan to accommodate the development of two new commercial buildings of 13,525 square feet total. The following applications were requested or required in order to implement the project as proposed:
 - a) An amendment to Newport Place (PC-11) Planned Community Development Plan to change the zoning designation of the subject property from "Restaurant Site 1" to "General Commercial Site 8", pursuant to Chapters 20.56 (Planned Community District Procedures) and 20.66 (Amendments) of the Municipal Code.
 - b) A transfer of development rights to allow the transfer of 48 unbuilt hotel units, from Hotel Site 2-B (Fetcher Jones Vehicle Storage Facility at 1301 Quail Street) and 1,620 square feet from General Commercial Site 7 (Lexus Dealership at 3901 MacArthur Boulevard) for a total of 5,529 square feet to the subject site, pursuant to Chapter 20.46 (Transfer of Development Rights) of the Municipal Code.
 - c) A traffic study approval pursuant to Chapter 15.40 (Traffic Phasing Ordinance) as the project will generate in excess 300 average daily trips (ADT).
 - d) A conditional use permit to modify the off-street parking requirements, allow for the use of off-site parking, and to establish a parking management plan for the site, pursuant to Chapter 20.40 (Off-Street Parking) of the Municipal Code.
 - e) A modification permit to deviate from the landscaping requirements of the Newport Place (PC-11) Planned Community Development Plan, pursuant to Section 20.52.050 of the Municipal Code.

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- f) A waiver of the requirement for a development agreement pursuant to the provisions of Chapter 15.45 (Development Agreements) of the Municipal Code.
2. The subject property has zoning designation of Restaurant Site 1 of the Newport Place (PC-11) Planned Community Zoning District and the General Plan Land Use Element category is Mixed-Use Horizontal 2 ("MU-H2").
 3. The subject property is not located within the coastal zone.
 4. A public hearing was held by the Planning Commission on September 22, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
 5. At the September 22, 2011, Planning Commission hearing, the Planning Commission voted 4-3 to deny the project without prejudice.
 6. On October 1, 2011, the Planning Commission's decision to deny the applicant's request was appealed by City Councilmember Rush Hill. The appeal was filed to allow the City Council an opportunity to review the project given the importance of addressing the economic need for the City to support the improvement of the City's underperforming commercial areas combined with the applicant's willingness to address issues raised by the Planning Commission.
 7. Due to the concerns expressed by the Planning Commission at the September 22, 2011, Planning Commission hearing, the applicant modified the application request by:
 - a. Reducing the project gross floor area from 13,525 square feet to 12,351 square feet;
 - b. Reducing the transfer request from from General Commercial Site 7 (Lexus Dealership at 3901 MacArthur Boulevard) from 1,620 square feet to 400 square feet.
 - c. Changing the proposed land use mix by reducing general commercial area from 8,525 to 7,351 square feet and changing the operational characteristic of the proposed fast-food use to take-out limited use;
 - d. Increasing the number of on-site parking from 59 to 65 spaces thereby reducing the parking waiver request from 13 to 3 parking spaces; and
 - e. Reducing the off-site parking request from 32 to 16 spaces.
 8. A public hearing was held by the City Council on October 25, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.

9. Pursuant to Section 20.64.030.C, the public hearing was conducted "de novo," meaning that it was a new hearing and the decision being appealed has no force or effect as of the date the call for review was filed.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration (MND) was circulated for a 20-day public comment period beginning on July 15, 2011, and ending on August 3, 2011. The contents of the environmental document and comments on the document were considered by the Planning Commission in its review of the proposed project.
3. An Errata has been prepared which clarifies and augments data in the document in responses to comments including the added location of transfer of development rights to the subject property, and supports the conclusions reached in the draft MND. Consistent with CEQA Guidelines section 15073.5(c), recirculation of the MND is not required when new information is added to the MND which merely clarifies, amplifies, or makes insignificant modifications to the MND.
4. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program (MMRP) are feasible and will reduce the potential environmental impacts to a less than significant level.
5. The MND and MMRP are hereby adopted by the City Council. The document and all material, which constitute the record upon which this decision for recommendation was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
6. The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

1. The subject property is located in Statistical Area L4 (Airport Area) and has a General Plan designation of Mixed-Use Horizontal 2 ("MU-H2"). The MU-H2 designation provides for a horizontal intermixing of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. The proposed commercial development would be allowed as the proposed uses are ancillary and supportive to the existing nearby office and light industrial developments.
2. Chapter 20.46 (Transfer of Development Rights) of the Municipal Code requires the City Council must also make the following findings for the approval of transfer of development rights:

Finding:

A. The reduced density/intensity on the donor site provides benefits to the City.

Facts in Support of Finding:

- A-1. The transfer of 48 hotel rooms from Hotel Site 2-B and 400 square feet from General Commercial Site 7 would result in a reduced intensity on the donor sites which also would result in a reduction of local vehicle trips and traffic congestion traffic, especially along North Bristol Street and MacArthur Boulevard.
- B-1. The proposed transfer allows the subject property to redevelop and improve with a mixture of food uses and general commercial uses.
- B. *The transfer of development rights will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer and the proposed uses and physical improvements would not lend themselves to conversion to higher traffic generating uses.*
- C-1. The transfer of development rights onto the receiver site (the subject property) will not result in adverse traffic impacts as demonstrated in the Traffic Study prepared by Kunzman Associates, Inc. The transfer and the proposed uses of the receiver site would not lend themselves to conversion to higher traffic generating uses since the subject property is currently approved for 7,996 square feet of food service use which is being reduced to a maximum of 5,000 square feet (4,000 square feet of high turnover restaurant use and 1,000 of take-out service, limited food use). The remainder of the development will be allocated for general commercial uses. Furthermore, the donor sites and the receiver site are located within the same Land Use Statistical Area L4. The proposed transfer would be trip neutral as any increase in the peak hour generated by the receiver site would be deduced proportionally from the donor sites.

C. The increased development potential transferred to the receiver site will be compatible and in scale with surrounding development and will not create abrupt changes in scale or character.

D-1. The increase development potential transferred to the subject property will be compatible and in scale with the surrounding development as the proposed development will be single story, at 29 feet in height. The subject property is physically suitable for the new development and provides improved vehicular access to and from the site off of MacArthur Boulevard.

D. The receiver site is physically suitable for the development proposed taking into consideration adjacent circulation patterns, protection of significant public views and open space, and site characteristics, including any slopes, submerged areas, and sensitive resources.

D-1. The subject property will have a direct access to and from MacArthur Boulevard instead of the existing circuitous route from Dove Street or Corinthian Way. The site characteristics lend themselves to the development since all building setbacks are being respected and the overall development scale is in proportion to the immediate area.

3. Chapter 15.40 (Traffic Phasing Ordinance, or TPO) of the Municipal Code requires that a traffic study be prepared and findings be made prior to issuance of building permits if a proposed project will generate in excess of 300 average daily trips (ADT). For the purposes of preparing the traffic analysis for this project, the 13,525-square-foot commercial development was assumed to include 1,000 square feet of fast-food uses, 4,000 square feet of high turn-over food uses, and 8,525 square feet of general commercial uses. Combined, this land use mix is forecast to generate a net increase of 942 trips per day, including 67 a.m. peak hour trips and 55 p.m. peak hour trips. Pursuant to Section 15.04.030.A, the Project shall not be approved unless certain findings can be made. The following findings and facts in support of such findings are set forth:

Finding:

A. That a traffic study for the project has been prepared in compliance with this chapter and Appendix A.

Facts in Support of Finding:

A-1. A traffic study, entitled "4221 Dolphin Striker Project Traffic Impact Analysis (Revised)" dated May 31, 2011, was prepared by Kunzman Associated, Inc. under the supervision of the City Traffic Engineer.

Finding:

- B. *That based on the weight of the evidence in the administrative record, including the traffic study, one of the findings for approval in subsection (B) can be made:*

15.40.030.B.1 Construction of the project will be completed within 60 months of project approval; and

15.40.030.B.1(a) The project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection.

Facts in Support of Finding:

- B-1. Construction of the Project is anticipated to be completed in 2012. If the Project is not completed within sixty (60) months of this approval, preparation of a new traffic study will be required.
- B-2. The traffic study indicates that the Project will increase traffic on 4 of the 12 study intersections in the City of Newport Beach by one percent (1%) or more during peak hour periods one year after the completion of the Project.
- B-3. Utilizing the Intersection Capacity Utilization (ICU) analysis specified by the Traffic Phasing Ordinance, the traffic study determined that the four primary intersections identified will operate at LOS "C" or better during the AM and PM peak hours, and no mitigation is required.
- B-4. Based on the weight of the evidence in the administrative record, including the traffic study, the implementation of the Project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection within the City of Newport Beach.

Finding:

- C. *That the project proponent has agreed to make or fund the improvements, or make the contributions, that are necessary to make the findings for approval and to comply with all conditions of approval.*

Facts in Support of Finding:

- C-1. Since implementation of the Project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection within the City of Newport Beach, no improvements or mitigations are necessary.

4. Based on the revised application, a total of 84 parking spaces are required for the proposed development per the Municipal Code. The applicant proposes a total of 81 spaces (16 off-site and 65 on-site), which results in a parking shortage of 3 spaces. Section 20.40.110.B.2 of the Municipal Code allows required off-street parking to be reduced with the approval of a conditional use permit for joint use of parking facilities. Additionally, Pursuant to Section 20.40.100 of the Municipal Code, approval of a conditional use permit is required for a portion of required parking that is not located on the same site it is intended to serve. In accordance with Section 20.40.100.B (Off-Site Parking) of the Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The parking facility is located within a convenient distance to the use it is intended to serve.*

Facts in Support of Finding:

- A-1. The subject property currently has a 16-space off-site recorded parking agreement with the adjacent property located at 4100 Newport Place. These off-site spaces are located on the 5th floor of the US Bank's parking structure. These spaces will be used solely by the employees of the project and not by customers. The US Bank's parking structure is located approximately 120 feet southwest of the property. It would take an employee approximately less than a minute to walk from the off-site parking structure according to *The Manual on Uniform Traffic Control Devices (MUTCD)* which suggests four feet per second as a normal walking speed. Given the location of the parking spaces on the fifth floor of the parking structure, it would take an additional 3 to 4 minutes of elevator time, for a total of less than 5 minutes. This is considered a convenient distance for employee parking.

Finding:

- B. *On-street parking is not being counted towards meeting parking requirements.*

Facts in Support of Finding:

- B-1. On-street parking spaces do not exist within close proximity of the project site and are not being used towards meeting the parking requirements of the project.

Finding:

- C. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.*

Facts in Support of Finding:

C-1. The use of the parking lot will not create an undue traffic hazard as the proposed project and subject off-site parking lot are located next to one another. This allows employees to walk across the subject property's parking lot, through a pedestrian walkway to the elevator of the parking structure, without crossing any street intersection. The parking structure is accessed through a keycard system and the applicant has agreed to provide their employees with the necessary keycards. Since the off-site parking will be used by employees only, typical noise disturbances associated with restaurant patrons loitering in parking lots is not expected.

Finding:

D. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.

Facts in Support of Finding:

D-1. The off-site parking spaces will be made available for the use of employees of the project on a daily basis, with no restriction on the hours of use. In the event that the applicant loses the ability to provide parking at the off-site location, the applicant will be required to notify the Community Development Director who will establish a reasonable time for substitute parking to be provided or reduce the size of the tenant spaces or change the tenant mix (i.e. less restaurant) in proportion to the parking spaces lost pursuant to Section 20.40.100.D (Loss of Off-Site Parking) of the Municipal Code.

5. Pursuant to Sections 20.40.100 (Off-Site Parking) and 20.40.110.B.2 (Reduction of Required Off-Street Parking) of the Municipal Code, a conditional use permit is required to allow a portion of required parking that is not located on the same site it is intended to serve and to modify the off-street parking requirements and to establish a parking management plan. In accordance with Section 20.52.020.F of the Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

A-1. The proposed commercial development and uses are consistent with MU-H2 General Plan land use designation. An amendment to the Newport Place (PC-11) Planned Community Development Plan to change the zoning designation of the subject property from Restaurant Site 1 to General Commercial Site 8 would allow general commercial uses in addition to food service uses.

Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

- B-1. With the approval an amendment to the Newport Place (PC-11) Planned Community Development Plan to change the zoning designation of the subject property from Restaurant Site 1 to General Commercial Site 8, the proposed general commercial and food service uses would be consistent with the zoning designation and development standards of General Commercial.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- C-1. The project includes conditions of approval to address potential incompatibles. As conditions of approval, the proposed development would be restricted to a total of 5,000 square feet of food service uses. Of that, 1,000 square feet would be allocated for a take-out service, limited food use. The remaining 7,351 square feet would be allocated for general commercial uses as allowed for General Commercial Sites per the Newport Place Planned Community Development Plan. Furthermore, the hours of general commercial uses would not be allowed during the 7:00 to 9:00 morning (AM) peak hour, daily.
- C-2. The proposed project has a parking shortage of 3 spaces per the Municipal Code. However, under a shared parking scenario within the project site, there would be a surplus of 2 spaces during peak demand and a surplus of 9 spaces during peak demand under a shared parking scenario with the adjoining restaurant sites. A parking management plan has been prepared to mitigate impacts associated with the reduction in the number of required parking spaces per the Municipal Code. This plan has been reviewed and approved by the City's Traffic Engineer. The off-site parking spaces will be made available for the use of employees of the project on a daily basis, with no restriction on the hours of use.
- C-3. The project's location, surrounded by existing retail commercial, office and light industrial developments, is appropriate given the proposed uses are to be compatible and supportive to the surrounding uses. The proposed development would not result in negative impacts to adjacent properties as a result of traffic, parking or noise.

Finding:

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- D-1. Adequate public and emergency vehicle access, public services, and utilities are provided to the subject property. The proposed development will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding:

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- E-1. The project complies with the development standards prescribed for General Commercial developments, with the exceptions of parking and landscaping requirements.
- E-2. The proposed development has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
6. In accordance with Section 20.52.050 (Modification Permits), the Planning Commission must make the following findings for approval of a modification permit:

Finding:

- A. *The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

- A-1. The proposed landscaping to be provided at the project site will be compatible with the adjacent properties and surrounding office and light industrial developments. The proposed ground cover, shrubs, and trees will be provided to enhance the aesthetics of the newly proposed development and seamlessly connect the property boundaries with adjoining sites.

Finding:

- B. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

- B-1. One tree per 25 lineal feet of the interior south property line is not provided due to the existing lot configuration. It is logical for the proposed development to be designed and located along the south property line and the needs of providing secondary exits along the back side of this building prevent the provisions of required landscaping.

Finding:

- C. *The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

- C-1. Sufficient landscaping consisting of ground cover, shrubs, and trees are being proposed in conjunction with the new development that meets the intent of the Planned Community Development Standards. The strict application of the Planning Community Development Standards would require reconfiguration of the project and result in physical hardships to the proposed development in terms of site design and building placement.

Finding:

- D. *There are no alternatives to the Modification Permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

- D-1. The provision of the required trees per the landscape development standards of PC-11 (Newport Place Planned Community) would result in a much narrower and less desirable building size and shape and would also reduce the length of the parking stalls and prevent the drive aisle to align with the driveway approaches.

E. *The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

E-1. The deviation from the landscape development standards will not result in any detriment to public health, safety, or welfare. The landscaping deviation will not change the density or intensity of the proposed development.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

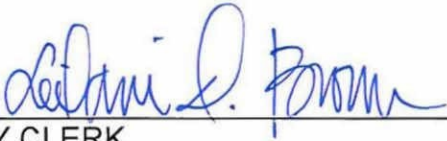
1. The City Council of the City of Newport Beach does hereby find, on the basis of the whole record, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the City Council's independent judgment and analysis. The City Council does hereby adopts Mitigated Negative Declaration and Errata, including the Mitigation Monitoring and Reporting Program attached as Exhibit "A". The document and all material, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
2. The proposed development complies with the Traffic Phasing Ordinance, based on the weight of the evidence in the administrative record, including Traffic Study No. TS2011-002.
3. The City Council of the City of Newport Beach does hereby approve Planned Community Text Amendment No. PD2010-007, Transfer of Development Rights No. TD2010-002, Conditional Use Permit No. UP2011-026, and Modification Permit No. MN2011-014, and waive the requirement for a Development Agreement, subject to the conditions set forth in Exhibit B.
4. This resolution shall take effect immediately upon adoption.
5. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.

6. This resolution was approved, passed and adopted at a regular meeting of the City Council of the City of Newport Beach, held on the 25th day of October, 2011.



MAYOR

ATTEST:



CITY CLERK



EXHIBIT "A"

**MACARTHUR AT DOLPHIN-STRIKER PROJECT
MITIGATION MONITORING PROGRAM
CITY OF NEWPORT BEACH**

Mitigation Measure	Phase of Implementation	Responsible Monitoring Party	Completion Date/Initials
Cultural Resources			
5.1. The project applicant shall have a qualified professional archaeologist on site to monitor for any potential impacts to archaeological or historic resources throughout the duration of any demolition and ground disturbing activities. The professional archeologist shall have the authority to halt any activities adversely impacting potentially significant cultural resources until the resources can be formally evaluated. The archaeologist must have knowledge of both prehistoric and historical archaeology. Additionally, the archaeological monitoring program shall include the presence of a local Native American representative (Gabrielino and/or Juaneno). Resources must be recovered, analyzed in accordance with CEQA guidelines, and curated. Suspension of ground disturbance in the vicinity of the discoveries shall not be lifted until the archaeologist has evaluated discoveries to assess whether they are classified as historical resources or unique archaeological sites, pursuant to CEQA.	During construction	City of Newport Beach Community Development Department	
5.2. The project applicant shall retain a qualified professional paleontologist for periodic monitoring for any potential impacts to paleontological resources throughout the duration of ground disturbing activities. In the event paleontological resources are uncovered, the professional paleontologist shall have the authority to halt any activities adversely impacting potentially significant fossil resources until the resources can be formally evaluated. If potentially significant fossils are uncovered they must be recovered, analyzed in accordance with CEQA guidelines, and curated at facilities at the Natural History Museum of Los Angeles County, or other scientific institution accredited for curation and collection of fossil specimens. Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until the paleontologist has evaluated the significance of the resources pursuant to CEQA.	During construction	City of Newport Beach Community Development Department	
Geology And Soils			
6.1. Prior to issuance of grading permits, a detailed design-engineering-level geotechnical investigation report shall be prepared and submitted with engineered grading plans to further evaluate	Prior to issuance of grading permits	City of Newport Beach Community Development	

expansive soils, soil corrosivity, settlement, foundations, grading constraints, and other soil engineering design conditions, and to provide site-specific recommendations to address these conditions, if determined necessary. The engineering-level report shall include and address each of the recommendations included in the geotechnical reports prepared by Strata-Tech, Inc. (Appendix B). The geotechnical reports shall be prepared and signed/stamped by a Registered Civil Engineer specializing in geotechnical engineering and a Certified Engineering Geologist. Geotechnical rough grading plan review reports shall be prepared in accordance with the City of Newport Beach Grading Ordinance.		Department	
Noise			
12.1. All noise-producing project equipment and vehicles using internal combustion engines shall be equipped with mufflers, air-inlet silencers where appropriate, and any other shrouds, shields, or other noise-reducing features in good operating condition that meet or exceed original factory specification. Mobile or fixed "package" equipment (e.g., arc welders, air compressors) shall be equipped with shrouds and noise control features that are readily available for that type of equipment.	During Construction	City of Newport Beach Community Development Department	
12.2. All mobile and fixed noise-producing equipment used on the proposed project that is regulated for noise output by a local, state, or federal agency shall comply with such regulation while in the course of project activity.	During Construction	City of Newport Beach Community Development Department	
12.3. Electrically powered equipment shall be used instead of pneumatic or internal combustion-powered equipment, where feasible.	During Construction	City of Newport Beach Community Development Department	
12.4. Mobile noise-generating equipment and machinery shall be shut off when not in use.	During Construction	City of Newport Beach Community Development Department	
12.5. Material stockpiles and mobile equipment staging, parking, and maintenance areas shall be located as far as practical from noise-sensitive receptors.	During Construction	City of Newport Beach Community Development Department	
12.6. Construction site and access road speed limits shall be established and enforced during the construction period.	During Construction	City of Newport Beach Community Development Department	
12.7. The use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only.	During Construction	City of Newport Beach Community Development Department	

12.8. No project-related public address or music system shall be audible at any adjacent receptor.	During Construction	City of Newport Beach Community Development Department	
12.9. The on-site construction supervisor shall have the responsibility and authority to receive and resolve noise complaints. A clear appeal process to the project proponent shall be established prior to construction commencement that shall allow for resolution of noise problems that cannot be immediately solved by the site supervisor.	During Construction	City of Newport Beach Community Development Department	

EXHIBIT "B"**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

PLANNING

1. *The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)*
2. *Conditional Use Permit No. UP2011-026 and Modification Permit No. MN2011-014 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
3. *Uses shall be permitted, or conditionally permitted, within the project consistent with the provisions of the Zoning Code, so long as they do not increase the approved traffic generation for the project (TS2011-002).*
4. *Required parking for this project has been determined based on documentation and a number of assumptions, including:*
 - a. *The shared parking analysis as a part of the Traffic Impact Analysis, prepared by Kunzman Associates, Inc., dated October 4, 2011 and the Addendum dated October 7, 2011;*
 - b. *A limitation that the maximum Net Public Area (NPA) of the 4,000 square feet high turn-over eating and drinking uses shall be limited to 2,000 square feet with a parking demand of 1 space per 40 square feet of NPA;*
 - c. *The take-out service, limited food use shall be limited to 1,000 gross square feet with a parking demand of 1 space per 250 gross square feet and a maximum of 6 seats;*
 - d. *The general commercial uses shall be limited to 7,351 net square feet proposed floor area with a parking demand of 1 space per 250 net square feet; and*
 - e. *The allowed hours of operation for general commercial uses are from 9:00 a.m. to 7:00 p.m., daily.*

Any changes to the assumed tenant mix or changes in the type of food use that would increase parking demands may require the preparation of a new shared parking analysis to ensure that adequate parking can be provided on-site and at the approved off-site

parking location, and shall be subject to the review and approval of the Community Development Department.

5. *A total of 65 parking spaces shall be provided on-site and 16 parking spaces shall be provided off-site at 4100 Newport Place, for a total of 81 parking spaces, as illustrated on the approved plans and parking management plan for the project.*
6. *In the event of loss of off-site parking, the applicant shall be required to notify the Community Development Director who will establish a reasonable time for substitute parking to be provided or reduce the size of the tenant spaces or change the tenant mix (i.e. less restaurant) in proportion to the parking spaces lost, in accordance to Section 20.40.100.D (Loss of Off-Site Parking) of the Municipal Code.*
7. *Any minor changes to the parking management plan shall be reviewed and approved by the Community Development Director and City Traffic Engineer prior to implementation. Significant changes may require an amendment to this Conditional Use Permit.*
8. *All employees are required to park off-site at a parking structure located at 4100 Newport Place at all times, until all 16 spaces are occupied, unless otherwise approved by the Community Development Director and may require an amendment to this Conditional Use Permit.*
9. *The hours of operation for the general commercial uses shall not commence before 9:00 a.m., daily.*
10. *The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.*
11. *The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of Conditional Use Permit No. UP2011-026 and Modification Permit No. MN2011-014.*
12. *Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to Conditional Use Permit No. UP2011-026, and/or Modification Permit No. MN2011-014 or the processing of new permits.*
13. *All landscape materials and landscaped areas shall be installed and maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.*
14. *Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.*

15. This Conditional Use Permit and Modification Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/ or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
16. Prior to the issuance of a building permit the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
17. Prior to the final inspection of building permits the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.
18. Reclaimed water shall be used whenever available, assuming it is economically feasible.
19. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
20. Watering shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.) to minimize evaporation the following morning.
21. All leaks shall be investigated by a representative from the Code Enforcement Division and the property owner or operator shall complete all required repairs.
22. Water shall not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
23. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

24. Prior to the issuance of a building permit the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
25. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
26. No outside paging system shall be utilized in conjunction with this project.
27. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
28. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
29. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
30. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
31. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the community Development Director, and may require an amendment to this Conditional Use Permit.

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32. Storage outside of the building or within the parking lot of the property shall be prohibited, with the exception of the required trash container enclosure.
 33. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
 34. All proposed signs shall be in conformance with the provision of Chapter 20.42 of the Newport Beach Municipal Code and shall be approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.
 35. The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate sight distance is provided.
 36. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.
 37. The site shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Zoning Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
 38. Prior to the issuance of a building permit the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
 39. Prior to issuance of the certificate of occupancy or final of building permits the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
 40. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided for all food uses, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Official and Public Works Director in conjunction with the approval of an alternate drainage plan.
 41. Kitchen exhaust fans for all food uses shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.

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42. The exhaust systems for any food uses shall be installed with pollution control units to filter and control odors.
 43. The construction and equipment staging area shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.
 44. A six-foot-high screen and security fence shall be placed around the construction site during construction.
 45. Construction equipment and materials shall be properly stored on the site when not in use.
 46. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the MacArthur at Dolphin-Striker project including, but not limited to, Planned Community Text Amendment No. PD2010-007, Transfer of Development Rights No. TD2010-002, Conditional Use Permit No. UP2011-026, Modification Permit No. MN2011-014, Traffic Study No. TS2011-002 and/or the City's related California Environmental Quality Act determinations, the certification of the Mitigated Negative Declaration and/or the adoption of a Mitigation Monitoring Program for the project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

47. Automatic fire sprinklers shall be required for any structure that exceeds 5,000 square feet regardless of occupancy. Additionally, food service uses shall require fire sprinklers when fire area has an occupant load of 100 or more. The sprinkler system shall be monitored by a UL certified alarm service company.

Building Division Conditions

48. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
49. Prior to the issuance of grading permits a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
50. Prior to issuance of grading permits the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
51. A list of "good house-keeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
52. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with five percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- b. All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.

- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.
- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes.
- j. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

- k. All construction roads internal to the construction site that have a traffic volume of more than 50 daily trips by construction equipment, or 150 total daily trips for all vehicles, shall be surfaced with base material or decomposed granite, or shall be paved.
- l. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads.
- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.

Unpaved Staging Areas or Roads

- n. Water or non-toxic soil stabilizers shall be applied, according to manufacturers' specifications, as needed to reduce off-site transport of fugitive dust from all unpaved staging areas and unpaved road surfaces.

Public Works Conditions

- 53. The existing OCSD easement along MacArthur Boulevard frontage shall be shown on plans. Any encroachment (wall, stairs and ADA ramps) within the existing OCSD easement requires approval from OCSD. The applicant shall provide said approval as part of the plan check process.
- 54. The parking lot layout plan shall be fully dimensioned. All parking spaces within the project site shall have a minimum of 26 feet of back up area/drive aisle. The parking

layout shall comply with City Standard STD-805-L-A and STD-805-L-B. The centerlines of the drive aisles that straddle the adjacent properties shall match. If the entire site (all 3 properties) is planned to be restriped, the entire site shall comply with City Standard STD-805-L-A and STD-805-L-B.

55. Prior to issuance of building permits, a signage and striping parking lot plan shall be submitted for review and approval.
56. The proposed project is required to stripe a 120-foot minimum dedicated right-turn lane into the project site along southbound MacArthur Boulevard. The travel lane adjacent to the new right-turn lane shall be 12-foot wide minimum. The applicant shall provide plans showing the proposed striping on MacArthur Boulevard.
57. New sidewalk, curb, gutter and driveway approach shall be installed along the MacArthur Boulevard and Dolphin Striker Way project frontage per the applicable City standards. The applicant may be required to provide a sidewalk easement along the driveway approach along MacArthur Boulevard if an ADA compliant path of travel can not be accommodate across the driveway approach.
58. The proposed project shall modify the southbound MacArthur Boulevard left turn pocket at the MacArthur Boulevard/Von Karman Avenue-Newport Place Drive intersection and restriping MacArthur Boulevard to accommodate the left turn access into the site. The design shall maintain a minimum left turn pocket length of 270 feet at the southbound MacArthur Boulevard/Von Karman Avenue-Newport Place Drive intersection with a transition length of 140 feet minimum. The transition length at the proposed left turn into the driveway shall be 120 feet minimum. The buffer between the two left turn pockets shall be a minimum of 50 feet. The applicant shall provide plans showing the proposed striping on MacArthur Boulevard.
59. All improvements shall be constructed as required by Ordinance and the Public Works Department.
60. An encroachment permit is required for all work activities within the public right-of-way.
61. In case of damage done to public improvements within the public right-of-way surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
62. All on-site drainage shall comply with the latest City Water Quality requirements.
63. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
64. Traffic circulation and signage is subject to further review by the City Traffic Engineer.

65. County Sanitation District fees shall be paid prior to the issuance of any building permits.

Mitigation Measures

66. *The applicant shall comply with all mitigation measures and standard conditions contained within the approved Mitigation Monitoring and Reporting Program of the adopted Mitigated Negative Declaration (Exhibit A) for the project.*

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2011-101 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 25th day of October, 2011, and that the same was so passed and adopted by the following vote, to wit:

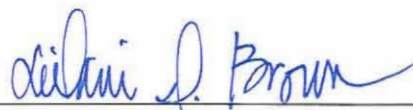
Ayes: Hill, Rosansky, Gardner, Selich, Curry, Daigle, Mayor Henn

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 26th day of October, 2011.



City Clerk
Newport Beach, California

(Seal)

